

House Study Bill 554

SENATE/HOUSE FILE _____
BY (PROPOSED IOWA FINANCE
AUTHORITY BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act requiring licensure of and regulating escrow agents and
2 escrow agencies, making an appropriation, and providing a
3 penalty.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5294XD 82
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1 1 Section 1. NEW SECTION. 545.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Administrator" means the superintendent of banking
1 5 appointed pursuant to section 524.201.
1 6 2. "Division" means the banking division of the department
1 7 of commerce.
1 8 3. "Escrow" means any transaction wherein one person, for
1 9 the purpose of effecting the sale, transfer, encumbering or
1 10 leasing of real or personal property to another person,
1 11 delivers any written instrument, money, evidence of title to
1 12 real or personal property, or other thing of value to a third
1 13 person until the happening of a specified event or the
1 14 performance of a prescribed condition, when it is then to be
1 15 delivered by such third person to a grantee, grantor,
1 16 promisee, promisor, obligee, obligor, bailee, bailor, or any
1 17 agent or employee thereof. The term includes the collection
1 18 of payments and the performance of related services by a third
1 19 person in connection with a loan secured by a lien on real
1 20 property.
1 21 4. "Escrow agency" means any of the following:
1 22 a. A person who employs one or more escrow agents.
1 23 b. An escrow agent who administers escrows on the escrow
1 24 agent's own behalf.
1 25 5. "Escrow agent" means any person engaged in the business
1 26 of administering escrows for compensation.
1 27 Sec. 2. NEW SECTION. 545.2 UNLAWFUL TO ENGAGE IN ESCROW
1 28 BUSINESS WITHOUT LICENSE.
1 29 It is unlawful for any person, unless exempted under
1 30 section 545.3, to engage in or carry on, or hold oneself out
1 31 as engaging in or carrying on, the escrow business or act in
1 32 the capacity of an escrow agent or escrow agency without first
1 33 obtaining a license as an escrow agent or escrow agency.
1 34 Sec. 3. NEW SECTION. 545.3 APPLICABILITY.
1 35 The provisions of this chapter do not apply to:
2 1 1. A person doing business under the laws of this state or
2 2 the United States relating to banks, mutual savings banks,
2 3 trust companies, savings and loan associations, common and
2 4 consumer finance companies, or industrial loan companies.
2 5 2. A licensed attorney admitted to practice in this state
2 6 rendering services as an attorney at law who transacts
2 7 closings through a lawyers trust account.
2 8 3. A licensed attorney admitted to practice in this state
2 9 actively engaged in conducting an escrow agency who transacts
2 10 closings through a lawyers trust account.
2 11 4. A firm or corporation that lends money on real or
2 12 personal property and is subject to licensing, supervision, or
2 13 auditing by an agency of the United States or of this state.
2 14 5. A person doing any act under order of a court.
2 15 Sec. 4. NEW SECTION. 545.4 APPLICATION REQUIREMENTS,
2 16 ISSUANCE, AND RESTRICTION.
2 17 1. A person who wishes to be licensed as an escrow agent
2 18 or escrow agency must file a written application with the

2 19 administrator.
2 20 2. The application must include all information required
2 21 to complete the application and meet all of the following
2 22 requirements:
2 23 a. Be verified by the person who wishes to be licensed.
2 24 b. Be accompanied by the appropriate fee prescribed in
2 25 section 545.11.
2 26 c. State the location of the applicant's principal office
2 27 and branch offices in this state and residence address.
2 28 d. State the name under which the applicant will conduct
2 29 business.
2 30 e. List the names and residence and business addresses of
2 31 all persons having an interest in the business as principals,
2 32 partners, officers, trustees, or directors, specifying the
2 33 capacity and title of each person.
2 34 f. Indicate the general plan and character of the
2 35 business.
3 1 g. State the length of time the applicant has been engaged
3 2 in the escrow business.
3 3 h. Contain a financial statement as specified in rule.
3 4 i. Provide such other information as the administrator
3 5 determines necessary in rule.
3 6 j. If the license is for an escrow agency, the application
3 7 must designate a natural person to receive service of process
3 8 in this state for the escrow agency.
3 9 3. An escrow agent or escrow agency shall immediately
3 10 notify the division of any material change in the information
3 11 contained in the application.
3 12 4. A person shall not be licensed as an escrow agent or
3 13 escrow agency or be a principal officer, director, or trustee
3 14 of an escrow agency if the person is the holder of an active
3 15 license issued pursuant to chapter 543B.
3 16 Sec. 5. NEW SECTION. 545.5 GROUNDS FOR REFUSAL TO ISSUE
3 17 LICENSE.
3 18 1. The administrator may refuse to issue a license if any
3 19 of the following apply:
3 20 a. In the case of an escrow agency, the applicant is
3 21 insolvent.
3 22 b. In the case of an escrow agency, the applicant is in
3 23 such a financial condition that the applicant cannot continue
3 24 in business with safety to the applicant's customers.
3 25 c. Has been convicted of a felony relating to the practice
3 26 of escrow agents or escrow agencies or a misdemeanor of which
3 27 an essential element is fraud.
3 28 d. The applicant has been barred, removed, or prohibited
3 29 from serving in any capacity in a financial institution by any
3 30 state or federal regulatory agency including but not limited
3 31 to the office of comptroller of the currency, the office of
3 32 thrift supervision, the federal deposit insurance corporation,
3 33 the board of governors of the federal reserve system, or the
3 34 United States department of housing and urban development.
3 35 e. The applicant has been convicted of forgery,
4 1 embezzlement, obtaining money under false pretenses, theft,
4 2 extortion, conspiracy to defraud, or another similar offense,
4 3 in a court of competent jurisdiction in this state or in any
4 4 other state, territory, or district of the United States, or
4 5 in any foreign jurisdiction. For the purposes of this
4 6 paragraph, "conviction" includes a guilty plea, deferred
4 7 judgment, deferred sentence, or other similar finding of guilt
4 8 by a court of competent jurisdiction.
4 9 f. The applicant has had a professional license of any
4 10 kind revoked in any state or jurisdiction. An agreement to
4 11 surrender a license and not to operate in an occupation in
4 12 which a professional license is required shall be considered a
4 13 revocation for the purposes of this paragraph.
4 14 g. The applicant is under eighteen years of age.
4 15 h. The applicant has failed to pay child support and is
4 16 identified in a certificate of noncompliance from the child
4 17 support recovery unit of the department of human services
4 18 according to the procedures in chapter 252J.
4 19 i. The applicant has failed to pay student loans and is
4 20 identified in a certificate of noncompliance from the college
4 21 student aid commission according to the procedures set forth
4 22 in chapter 261.
4 23 j. The applicant has within ten years before the date of
4 24 applying for the license, had suspended or revoked a license
4 25 issued pursuant to this chapter or a comparable license issued
4 26 by any other state, district, or territory of the United
4 27 States or any foreign country.
4 28 k. The applicant has caused the administrator to find that
4 29 the financial responsibility, character, and general fitness

4 30 of the applicant and of the members thereof if the applicant
4 31 is a partnership, association, or other organization and of
4 32 the officers, directors, and principal employees if the
4 33 applicant is a corporation, are such as to warrant belief that
4 34 the business will not be operated honestly, soundly, and
4 35 efficiently in the public interest consistent with the
5 1 purposes of this chapter.

5 2 2. It is sufficient cause for the refusal to license a
5 3 partnership, corporation, or any other association that any
5 4 member of the partnership or any officer or director of the
5 5 corporation or association has been convicted of any act or
5 6 omission, as set out in this section, which would be cause for
5 7 such action had the applicant or licensee been a natural
5 8 person.

5 9 3. The administrator, upon a finding that a license should
5 10 not be granted pursuant to this chapter, shall notify the
5 11 applicant in writing of the denial and the reasons for the
5 12 denial.

5 13 Sec. 6. NEW SECTION. 545.6 CONTENTS OF LICENSE ==
5 14 ASSOCIATION WITH ONLY ONE ESCROW AGENCY.

5 15 1. The division shall issue to each licensee a license
5 16 which contains all of the following:

5 17 a. The name and address of the licensee, and in the case
5 18 of an escrow agent, the name of the escrow agency with whom
5 19 the escrow agent will be associated.

5 20 b. The imprinted seal of the division.

5 21 c. Any additional matter prescribed by the division.

5 22 2. An escrow agent shall not associate with or be employed
5 23 by more than one escrow agency at the same time.

5 24 Sec. 7. NEW SECTION. 545.7 DELIVERY AND POSSESSION OF
5 25 LICENSE OF ESCROW AGENT == DISPLAY OF LICENSES.

5 26 1. The division shall deliver or mail the license of each
5 27 escrow agent to the escrow agency with whom the licensee is
5 28 associated and the escrow agency shall keep each license in
5 29 its custody and control.

5 30 2. An escrow agency shall display conspicuously in the
5 31 escrow agency's place of business the license of the escrow
5 32 agency and of each escrow agent associated with the escrow
5 33 agency. If an escrow agency maintains more than one place of
5 34 business within the state, the division shall issue an
5 35 additional license to each branch office so maintained, and
6 1 each branch office shall display conspicuously the additional
6 2 license.

6 3 Sec. 8. NEW SECTION. 545.8 SPECIFICATION OF PLACE OF
6 4 BUSINESS == DESIGNATION IN LICENSE == EFFECT.

6 5 1. An escrow agency shall maintain a definite place of
6 6 business within the state, which must be a room or rooms used
6 7 for the transaction of escrows, and any allied businesses, and
6 8 which must serve as the office for the transaction of business
6 9 pursuant to the authority granted in the license.

6 10 2. An escrow agency shall specify its place of business in
6 11 its application for a license and the license shall designate
6 12 the escrow agency's place of business.

6 13 3. A license does not authorize the licensee to transact
6 14 business from any office other than that designated in the
6 15 license.

6 16 Sec. 9. NEW SECTION. 545.9 PROHIBITION ON ADMINISTERING
6 17 ESCROWS IN SAME LOCATION AS OR IN CONJUNCTION WITH OTHER
6 18 BUSINESSES == EXCEPTIONS.

6 19 1. Except as otherwise provided in subsection 2, a
6 20 licensee shall not conduct the business of administering
6 21 escrows for compensation within any office, suite, room, or
6 22 place of business in which any other business is solicited or
6 23 engaged in, or in association or conjunction with any other
6 24 business, except a notary public, unless authority to do so is
6 25 given by the administrator.

6 26 2. A licensee may conduct the business of administering
6 27 escrows pursuant to this chapter in the same office or place
6 28 of business as a mortgage banker or mortgage broker if all of
6 29 the following apply:

6 30 a. The licensee and the mortgage banker or mortgage broker
6 31 meet all of the following requirements:

6 32 (1) Operate as separate legal entities.

6 33 (2) Maintain separate accounts, books, and records.

6 34 (3) Are subsidiaries of the same parent corporation.

6 35 (4) Maintain separate licenses.

7 1 b. The mortgage banker or mortgage broker is licensed by
7 2 this state pursuant to chapter 535B and does not conduct any
7 3 business as a mortgage banker or mortgage broker licensed
7 4 pursuant to chapter 535B in the office or place of business.

7 5 Sec. 10. NEW SECTION. 545.10 LICENSE NOT TRANSFERABLE.

7 6 A license issued pursuant to this chapter does not give
7 7 authority to perform any act specified in this chapter to any
7 8 person other than the person to whom the license is issued, or
7 9 from any place of business other than that specified in the
7 10 license.

7 11 Sec. 11. NEW SECTION. 545.11 EXPIRATION, RENEWAL, FEES,
7 12 DEPOSIT OF MONEY RECEIVED.

7 13 1. A license issued pursuant to this chapter expires on
7 14 July 1 of each year if it is not renewed. A license may be
7 15 renewed by filing an application for renewal, paying the
7 16 annual fee for the succeeding year, and submitting all
7 17 information required to complete the renewal.

7 18 2. The fees for the issuance or renewal of a license for
7 19 an escrow agency are the following:

7 20 a. For filing an application for an initial license, five
7 21 hundred dollars for the principal office and one hundred
7 22 dollars for each branch office.

7 23 b. If the license is approved for issuance, two hundred
7 24 dollars for the principal office and one hundred dollars for
7 25 each branch office. The fee must be paid before issuance of
7 26 the license.

7 27 c. For filing an application for renewal, two hundred
7 28 dollars for the principal office and one hundred dollars for
7 29 each branch office.

7 30 3. The fees for the issuance or renewal of a license for
7 31 an escrow agent are the following:

7 32 a. For filing an application for an initial license or for
7 33 the renewal of a license, one hundred dollars.

7 34 b. If a license is approved for issuance or renewal,
7 35 twenty-five dollars. The fee must be paid before the issuance
8 1 or renewal of the license.

8 2 4. If a licensee fails to pay the fee or submit all
8 3 required information for the annual renewal of the license
8 4 before its expiration, the license may be renewed only upon
8 5 the payment of a fee one and one-half times the amount
8 6 otherwise required for renewal. A license may be renewed
8 7 pursuant to this subsection only if all the fees are paid and
8 8 all required information is submitted within one year after
8 9 the date on which the license expired.

8 10 5. In addition to the other fees set forth in this
8 11 section, each applicant or licensee shall pay the following:

8 12 a. For filing an application for a duplicate copy of any
8 13 license, upon satisfactory showing of its loss, ten dollars.

8 14 b. For filing any change of information contained in the
8 15 application, ten dollars.

8 16 c. For each change of association with an escrow agency,
8 17 twenty-five dollars.

8 18 6. Except as otherwise provided in this chapter, all fees
8 19 received pursuant to this chapter shall be deposited with the
8 20 administrator.

8 21 Sec. 12. NEW SECTION. 545.12 ESCROW AGENCY SURETY BONDS
8 22 == ESCROW AGENTS AS PRINCIPALS ON BOND.

8 23 1. Except as otherwise provided in section 545.13, as a
8 24 condition of doing business in this state, an escrow agency
8 25 shall deposit with the administrator and keep in full force
8 26 and effect a corporate surety bond payable to the state of
8 27 Iowa, in the amount set forth in subsection 4, which is
8 28 executed by a corporate surety satisfactory to the
8 29 administrator and which names as principals the escrow agency
8 30 and all escrow agents employed by or associated with the
8 31 escrow agency.

8 32 2. At the time of filing an application for a license as
8 33 an escrow agent, the applicant shall file with the
8 34 administrator proof that the applicant is named as a principal
8 35 on the corporate surety bond deposited with the administrator
9 1 by the escrow agency with whom the applicant is associated or
9 2 employed.

9 3 3. Bonds filed with the administrator shall be on the form
9 4 prescribed and furnished by the administrator.

9 5 4. a. An escrow agency shall deposit a corporate surety
9 6 bond that complies with the provisions of this section or a
9 7 substitute form of security that complies with the provisions
9 8 of section 545.13 in a form acceptable to the administrator in
9 9 the amount set out in paragraph "b" based upon the average
9 10 monthly balance of the trust account or escrow account
9 11 maintained by the escrow agency pursuant to section 545.32:

9 12 b. Average monthly balance Bond or security required

9 13 (1) \$50,000 or less..... \$ 20,000

9 14 (2) More than \$50,000 but not more than \$250,000.... \$ 50,000

9 15 (3) More than \$250,000 but not more than \$500,000... \$100,000

9 16 (4) More than \$500,000 but not more than \$750,000... \$150,000

9 17 (5) More than \$750,000 but not more than \$1,000,000. \$200,000
9 18 (6) More than \$1,000,000..... \$250,000
9 19 c. The administrator shall determine the appropriate
9 20 amount of the surety bond or substitute form of security that
9 21 must be deposited initially by the escrow agency based upon
9 22 the expected average monthly balance of the trust account or
9 23 escrow account maintained by the escrow agency pursuant to
9 24 section 545.32. After the initial deposit, the administrator
9 25 shall, on a semiannual basis, determine the appropriate amount
9 26 of the surety bond or substitute form of security that must be
9 27 deposited by the escrow agency based upon the average monthly
9 28 balance of the trust account or escrow account maintained by
9 29 the escrow agency pursuant to section 545.32.
9 30 Sec. 13. NEW SECTION. 545.13 SUBSTITUTE FORM OF SECURITY
9 31 IN LIEU OF SURETY BOND.
9 32 1. As a substitute for the surety bond required by section
9 33 545.12, an escrow agency may, in accordance with this section,
9 34 deposit with any bank or trust company authorized to do
9 35 business in this state, in a form approved by the
10 1 administrator, any of the following:
10 2 a. An obligation of a bank, savings and loan association,
10 3 or credit union licensed to do business in this state.
10 4 b. Bills, bonds, notes, debentures, or other obligations
10 5 of the United States or any agency or instrumentality of that
10 6 agency, or guaranteed by the United States.
10 7 c. Any obligation of this state or any city, county,
10 8 township, school district, or other instrumentality of this
10 9 state, or guaranteed by this state.
10 10 2. The obligations of a bank, savings and loan
10 11 association, or credit union must be held to secure the same
10 12 obligation as would the surety bond. With the approval of the
10 13 administrator, the depositor may substitute other suitable
10 14 obligations for those deposited which must be assigned to the
10 15 state of Iowa and are negotiable only upon approval by the
10 16 administrator.
10 17 3. Any interest or dividends earned on the deposit accrue
10 18 to the account of the depositor.
10 19 4. The deposit must be in an amount at least equal to the
10 20 required surety bond and must state that the amount cannot be
10 21 withdrawn except by direct and sole order of the
10 22 administrator. The value of any item deposited pursuant to
10 23 this section must be based upon principal amount or market
10 24 value, whichever is lower.
10 25 Sec. 14. NEW SECTION. 545.14 CANCELLATION OF BOND AND
10 26 REVOCATION OF LICENSE.
10 27 1. The surety may cancel a bond upon giving sixty days'
10 28 notice to the administrator. Upon receipt by the
10 29 administrator of such a notice, the administrator immediately
10 30 shall notify the licensee who is the principal on the bond of
10 31 the effective date of cancellation of the bond, and that the
10 32 license will be revoked unless the licensee furnishes an
10 33 equivalent bond or a substitute form of security authorized by
10 34 section 545.13 before the effective date of the cancellation.
10 35 The notice must be sent to the licensee by certified mail to
11 1 the licensee's last address of record filed in the office of
11 2 the division.
11 3 2. If the licensee does not comply with the requirements
11 4 set out in the notice from the administrator, the license
11 5 shall be revoked on the date the bond is canceled.
11 6 Sec. 15. NEW SECTION. 545.15 ACTION ON BOND.
11 7 1. A person claiming against a bond may bring an action in
11 8 a court of competent jurisdiction on the bond for damages to
11 9 the extent covered by the bond. A person who brings an action
11 10 on a bond shall notify the administrator in writing upon
11 11 filing the action. An action shall not be commenced after the
11 12 expiration of three years following the commission of the act
11 13 on which the action is based.
11 14 2. Upon receiving a request from a person for whose
11 15 benefit a bond is required, the administrator shall notify the
11 16 person of all of the following:
11 17 a. That a bond is in effect and the amount of the bond.
11 18 b. If there is an action against the bond, the title,
11 19 court, and case number of the action, and the amount sought by
11 20 the plaintiff.
11 21 3. If a surety wishes to make payment without awaiting
11 22 action by a court, the amount of the bond must be reduced to
11 23 the extent of any payment made by the surety in good faith
11 24 under the bond. Any payment must be based on written claims
11 25 received by the surety before any action is taken by a court.
11 26 4. The surety may bring an action for interpleader against
11 27 all claimants upon the bond. If the surety does so, the

11 28 surety shall publish notice of the action at least once each
11 29 week for two weeks in every issue of a newspaper of general
11 30 circulation in the county where the escrow agent or escrow
11 31 agency has its principal place of business. The surety may
11 32 deduct its costs of the action, including attorney fees and
11 33 publication costs, from its liability under the bond.
11 34 5. Claims against a bond have equal priority, and if the
11 35 bond is insufficient to pay all claims in full, the claims
12 1 must be paid on a pro rata basis. Partial payment of claims
12 2 is not full payment, and any claimant may bring an action
12 3 against the escrow agent or escrow agency for the unpaid
12 4 balance.

12 5 Sec. 16. NEW SECTION. 545.16 ADMINISTRATOR DUTIES.
12 6 1. The administrator shall exercise general supervision
12 7 and control over escrow agents and escrow agencies doing
12 8 business in this state.
12 9 2. The administrator shall do all of the following:
12 10 a. Adopt rules pursuant to chapter 17A as necessary to
12 11 administer this chapter.
12 12 b. Conduct or cause to be conducted each year an
12 13 examination of each escrow agency licensed pursuant to this
12 14 chapter.
12 15 c. Conduct such investigations as may be necessary to
12 16 determine whether any person has violated any provision of
12 17 this chapter.
12 18 d. Conduct such examinations, investigations, and
12 19 hearings, in addition to those specifically provided for by
12 20 law, as may be necessary and proper for the efficient
12 21 administration of the laws of this state relating to escrow.
12 22 e. (1) Classify as confidential the financial statements
12 23 of an escrow agency and those records and information obtained
12 24 by the division which are any of the following:
12 25 (a) Obtained from a governmental agency upon the express
12 26 condition that they remain confidential.
12 27 (b) Except as otherwise provided in section 545.22,
12 28 consist of information compiled by the division in the
12 29 investigation of possible violations of this chapter.
12 30 (2) This paragraph "e" does not limit examination by the
12 31 legislative services agency or any other person pursuant to a
12 32 court order.
12 33 3. An escrow agency may engage a certified public
12 34 accountant to perform such an examination in lieu of the
12 35 division. In such a case, the examination must be equivalent
13 1 to the type of examination made by the division and the
13 2 expense must be borne by the escrow agency being examined.
13 3 4. The administrator shall determine whether an
13 4 examination performed by an accountant pursuant to subsection
13 5 3 is equivalent to an examination conducted by the division.
13 6 The administrator may examine any area of the operation of an
13 7 escrow agency if the administrator determines that the
13 8 examination of that area is not equivalent to an examination
13 9 conducted by the division.

13 10 Sec. 17. NEW SECTION. 545.17 ADMINISTRATOR POWERS ==
13 11 SUBPOENAS, OATHS, AND EXAMINATION OF WITNESSES == PENALTY.
13 12 1. In the conduct of any examination, investigation, or
13 13 hearing, the administrator may do any of the following:
13 14 a. Compel the attendance of any person by subpoena.
13 15 b. Administer oaths.
13 16 c. Examine any person under oath concerning the business
13 17 and conduct of affairs of any person subject to this chapter,
13 18 and in connection therewith require the production of any
13 19 books, records, or papers relevant to the inquiry.
13 20 2. A person subpoenaed pursuant to this section who
13 21 willfully refuses or willfully neglects to appear at the time
13 22 and place named in the subpoena or to produce books, records,
13 23 or papers required by the administrator, or who refuses to be
13 24 sworn or answer as a witness, is guilty of a simple
13 25 misdemeanor.

13 26 Sec. 18. NEW SECTION. 545.18 ESCROW AGENCY SUPERVISION
13 27 AND EXAMINATION FEES == STANDARDS FOR ESCROW AGENTS'
13 28 SUPERVISION.
13 29 1. The administrator shall establish in rule the fees to
13 30 be paid by escrow agencies for the supervision and examination
13 31 of escrow agencies by the administrator.
13 32 2. In establishing the fees, the administrator shall
13 33 consider all of the following:
13 34 a. The complexity of the various examinations to which the
13 35 fees apply.
14 1 b. The skill required to conduct such examinations.
14 2 c. The expenses associated with conducting such
14 3 examinations and preparing reports.

14 4 d. Any other factors the administrator deems relevant.
14 5 3. The administrator shall adopt rules prescribing the
14 6 standards for determining whether an escrow agency has
14 7 maintained adequate supervision of an escrow agent pursuant to
14 8 the provisions of this chapter.
14 9 Sec. 19. NEW SECTION. 545.19 PAYMENT OF ASSESSMENT AND
14 10 COOPERATION IN EXAMINATIONS.
14 11 An escrow agency shall pay the assessment levied by the
14 12 administrator and cooperate fully with the examinations
14 13 performed pursuant to this chapter.
14 14 Sec. 20. NEW SECTION. 545.20 RECORDS OF ESCROW
14 15 TRANSACTIONS.
14 16 1. An escrow agent or escrow agency shall maintain, for a
14 17 period of not less than six years, complete and suitable
14 18 records of all escrow transactions made by the escrow agent or
14 19 escrow agency. A record of a transaction must be maintained
14 20 in the county in which the property to which it relates is
14 21 located if the escrow agent or escrow agency maintains a place
14 22 of business in that county. If a place of business is not
14 23 maintained in that county, the record must be maintained in
14 24 the escrow agent's or escrow agency's principal place of
14 25 business.
14 26 2. An escrow agent or escrow agency shall, at the times
14 27 required by the administrator, file in the office of the
14 28 administrator a correct statement, in the form and containing
14 29 the data the administrator may require, of the business of the
14 30 escrow agent or escrow agency.
14 31 Sec. 21. NEW SECTION. 545.21 RECORDS OF ADMINISTRATOR ==
14 32 PUBLIC INSPECTION AND CONFIDENTIALITY.
14 33 Except as otherwise provided by law, all papers, documents,
14 34 reports, and other written instruments filed with the
14 35 administrator pursuant to this chapter are open to public
15 1 inspection, except that the administrator may withhold from
15 2 public inspection for such time as the administrator considers
15 3 necessary any information which in the administrator's
15 4 judgment the public welfare or the welfare of any escrow agent
15 5 or escrow agency requires to be so withheld, notwithstanding
15 6 chapter 22.
15 7 Sec. 22. NEW SECTION. 545.22 RECORDS OF ADMINISTRATOR ==
15 8 RECORDS DEEMED CONFIDENTIAL == DISCIPLINARY ORDERS DEEMED OPEN
15 9 TO PUBLIC INSPECTION.
15 10 1. All documents and other information filed in connection
15 11 with a complaint with the administrator and all documents and
15 12 other information compiled as a result of the investigation
15 13 conducted to determine whether to initiate disciplinary action
15 14 are confidential, except as otherwise provided,
15 15 notwithstanding chapter 22.
15 16 2. A complaint or other pleading filed by the
15 17 administrator is open to public inspection.
15 18 3. The administrator may provide the information from
15 19 examination reports and correspondence to the attorney
15 20 general, or other law enforcement agency for purposes of
15 21 enforcing this chapter, section 714.16, or any other state or
15 22 federal criminal or regulatory law.
15 23 4. The administrator may release the reports and
15 24 correspondence in the course of an enforcement proceeding or a
15 25 hearing held by the administrator.
15 26 5. An order that imposes discipline and the findings of
15 27 fact and conclusions of law supporting that order is open to
15 28 public inspection.
15 29 Sec. 23. NEW SECTION. 545.23 CHANGE IN OWNERSHIP OF
15 30 VOTING STOCK OR OTHER OWNERSHIP INTEREST OF ESCROW AGENCY.
15 31 1. An escrow agency shall immediately notify the
15 32 administrator of any change in the ownership of five percent
15 33 or more of its outstanding voting stock, or ownership of five
15 34 percent of other ownership interest.
15 35 2. An application for licensure must be submitted to the
16 1 administrator, pursuant to section 545.4, by a person who
16 2 acquires any of the following described voting stock:
16 3 a. At least twenty-five percent of the outstanding voting
16 4 stock of an escrow agency.
16 5 b. Any outstanding voting stock of an escrow agency if the
16 6 acquisition will result in a change in the control of the
16 7 escrow agency.
16 8 3. Except as otherwise provided in subsection 5, the
16 9 administrator shall conduct an investigation to determine
16 10 whether the applicant has the experience, character, financial
16 11 condition, business reputation, and general fitness to command
16 12 the confidence of the public and to warrant the belief that
16 13 the business conducted will protect and safeguard the public.
16 14 If the administrator denies the application, the administrator

16 15 may forbid the applicant from participating in the business of
16 16 the escrow agency.

16 17 4. The escrow agency with which the applicant is
16 18 affiliated shall pay a portion of the cost of the
16 19 investigation as the administrator requires. All money
16 20 received by the administrator pursuant to this subsection
16 21 shall be deposited in the fund for mortgage lending created by
16 22 section 545.24.

16 23 5. An escrow agency may submit a written request to the
16 24 administrator to waive an investigation otherwise required
16 25 pursuant to subsection 3. The administrator may grant a
16 26 waiver if the applicant has undergone a similar investigation
16 27 by a state or federal agency in connection with the licensing
16 28 of the applicant or the applicant's employment with a
16 29 financial institution.

16 30 Sec. 24. NEW SECTION. 545.24 FUND FOR MORTGAGE LENDING
16 31 == USE AND ADMINISTRATION.

16 32 1. A fund for mortgage lending is created in the office of
16 33 the treasurer of state under the control of the administrator.

16 34 2. Except as otherwise provided by law, any money
16 35 collected by the administrator or division pursuant to law
17 1 shall be deposited in the fund for mortgage lending, is
17 2 appropriated, and shall only be used to do any of the
17 3 following:

17 4 a. Carry out the programs and laws administered by the
17 5 administrator and the division.

17 6 b. Pay the expenses related to the operations of the
17 7 administrator and the division.

17 8 3. Notwithstanding section 8.33, moneys in the fund for
17 9 mortgage lending at the end of each fiscal year shall not
17 10 revert to any other fund but shall remain in the fund for
17 11 expenditure for subsequent fiscal years.

17 12 4. The administrator shall administer the fund for
17 13 mortgage lending. Any interest or income earned on the money
17 14 in the fund shall be credited to the fund after deducting any
17 15 applicable charges. Any claims against the fund shall be paid
17 16 as other claims against the state are paid.

17 17 Sec. 25. NEW SECTION. 545.25 GROUNDS FOR DISCIPLINARY
17 18 ACTION.

17 19 1. The administrator may take disciplinary action, or
17 20 other actions within the powers of the administrator, against
17 21 an escrow agency or escrow agent if the administrator finds
17 22 any of the following:

17 23 a. The licensee has violated a provision of this chapter
17 24 or a rule adopted pursuant to this chapter or any other state
17 25 or federal law applicable to the conduct of its business or
17 26 has aided or abetted another to do so.

17 27 b. A fact or condition exists which, if it had existed at
17 28 the time of the original application for the license, would
17 29 have warranted the administrator to refuse originally to issue
17 30 the license.

17 31 c. The licensee is found upon investigation to be
17 32 insolvent, in which case the license shall be revoked
17 33 immediately.

17 34 d. The licensee has violated an order of the
17 35 administrator.

18 1 e. If an escrow agency is insolvent.

18 2 f. If an escrow agency is in such a financial condition
18 3 that the escrow agency cannot continue in business with safety
18 4 to escrow agency customers.

18 5 g. The licensee has committed fraud in connection with any
18 6 transaction governed by this chapter.

18 7 h. The licensee has intentionally or knowingly made any
18 8 misrepresentation or false statement to, or concealed any
18 9 essential or material fact from, any principal or designated
18 10 agent of a principal in the course of the escrow business.

18 11 i. The licensee has intentionally or knowingly made or
18 12 caused to be made to the administrator any false
18 13 representation of a material fact or has suppressed or
18 14 withheld from the administrator any information which the
18 15 applicant or licensee possesses.

18 16 j. The licensee has failed without reasonable cause to
18 17 furnish to the parties of an escrow their respective
18 18 statements of a settlement within a reasonable time after the
18 19 close of escrow.

18 20 k. The licensee has failed without reasonable cause to
18 21 deliver, within a reasonable time after the close of escrow,
18 22 to the respective parties of an escrow transaction any money,
18 23 documents, or other properties held in escrow in violation of
18 24 the provisions of the escrow instructions.

18 25 l. The licensee has refused to permit an examination by

18 26 the administrator of the licensee's books and affairs or has
18 27 refused or failed, within a reasonable time, to furnish any
18 28 information or make any report that may be required by the
18 29 administrator pursuant to this chapter.

18 30 m. The licensee has been convicted of a felony relating to
18 31 the practice of escrow agents or escrow agencies or a
18 32 misdemeanor of which an essential element is fraud.

18 33 n. In the case of an escrow agent, has failed to maintain
18 34 complete and accurate records of all transactions within the
18 35 last six years.

19 1 o. The licensee has commingled the money of others with
19 2 the licensee's own or converted the money of others to the
19 3 licensee's own use.

19 4 p. The licensee has failed, before the close of escrow, to
19 5 obtain written escrow instructions concerning any essential or
19 6 material fact or intentionally failed to follow the written
19 7 instructions which have been agreed upon by the parties and
19 8 accepted by the holder of the escrow.

19 9 q. The licensee has failed to disclose in writing that the
19 10 licensee is acting in the dual capacity of escrow agent or
19 11 escrow agency and undisclosed principal in any transaction.

19 12 r. The licensee has been barred, removed, or prohibited
19 13 from serving in any capacity in a financial institution by any
19 14 state or federal regulatory agency including but not limited
19 15 to the office of comptroller of the currency, the office of
19 16 thrift supervision, the federal deposit insurance corporation,
19 17 the board of governors of the federal reserve system, or the
19 18 United States department of housing and urban development.

19 19 s. The licensee has been convicted of forgery,
19 20 embezzlement, obtaining money under false pretenses, theft,
19 21 extortion, conspiracy to defraud, or another similar offense,
19 22 in a court of competent jurisdiction in this state or in any
19 23 other state, territory, or district of the United States, or
19 24 in any foreign jurisdiction. For the purposes of this
19 25 paragraph, "conviction" includes a guilty plea, deferred
19 26 judgment, deferred sentence, or other similar finding of guilt
19 27 by a court of competent jurisdiction.

19 28 t. The licensee has had a professional license of any kind
19 29 revoked in any state or jurisdiction. An agreement to
19 30 surrender a license and not to operate in an occupation in
19 31 which a professional license is required shall be considered a
19 32 revocation for the purposes of this paragraph.

19 33 u. The licensee has failed to pay child support and is
19 34 identified in a certificate of noncompliance from the child
19 35 support recovery unit of the department of human services
20 1 according to the procedures in chapter 252J.

20 2 v. The licensee has failed to pay student loans and is
20 3 identified in a certificate of noncompliance from the college
20 4 student aid commission according to the procedures set forth
20 5 in chapter 261.

20 6 w. An escrow agency has done any of the following:

20 7 (1) Failed to maintain adequate supervision of an escrow
20 8 agent.

20 9 (2) Instructed an escrow agent to commit an act which
20 10 would be cause for the revocation of the escrow agent's
20 11 license and the escrow agent committed the act. An escrow
20 12 agent is not subject to disciplinary action for committing
20 13 such an act under instruction by the escrow agency.

20 14 x. The licensee has caused the administrator to find that
20 15 the financial responsibility, character, and general fitness
20 16 of the applicant and of the members thereof if the applicant
20 17 is a partnership, association, or other organization, and of
20 18 the officers, directors, and principal employees if the
20 19 applicant is a corporation, are such as to warrant belief that
20 20 the business is not being operated honestly, soundly, and
20 21 efficiently in the public interest consistent with the
20 22 purposes of this chapter.

20 23 2. It is sufficient cause for the imposition of a penalty
20 24 or the refusal, suspension, or revocation of the license of a
20 25 partnership, corporation, or any other association that any
20 26 member of the partnership or any officer or director of the
20 27 corporation or association has been guilty of any act or
20 28 omission which would be cause for such action had the
20 29 applicant or licensee been a natural person.

20 30 Sec. 26. NEW SECTION. 545.26 DISCIPLINARY ACTIONS.

20 31 1. The administrator may impose one or more of the
20 32 following disciplinary actions against a licensee:

20 33 a. Revoke a license.

20 34 b. Suspend a license until further order of the
20 35 administrator or for a specified period of time.

21 1 c. Impose a period of probation under specified

21 2 conditions.

21 3 d. Impose civil penalties in an amount not to exceed five
21 4 thousand dollars for each violation.

21 5 e. Issue a citation and warning respecting licensee
21 6 behavior.

21 7 2. The administrator may order an emergency suspension of
21 8 a licensee's license pursuant to section 17A.18A. A written
21 9 order containing the facts or conduct which warrants the
21 10 emergency action shall be timely sent to the licensee by
21 11 restricted certified mail. Upon issuance of the suspension
21 12 order, the licensee shall be notified of the right to an
21 13 evidentiary hearing. A suspension proceeding shall be
21 14 promptly instituted.

21 15 3. A licensee may surrender a license by delivering to the
21 16 administrator written notice of surrender, but a surrender
21 17 does not affect the licensee's civil or criminal liability for
21 18 acts committed before the surrender.

21 19 4. A revocation, suspension, or surrender of a license
21 20 does not impair or affect the obligation of a preexisting
21 21 lawful contract between the licensee and any person.

21 22 5. Except as provided in this section, a license shall not
21 23 be revoked or suspended except after notice and an opportunity
21 24 for an evidentiary hearing in accordance with chapter 17A. If
21 25 such an application is not made within twenty days after the
21 26 entry of the order, the administrator shall enter a final
21 27 order.

21 28 Sec. 27. NEW SECTION. 545.27 NOTICE OF SUSPENSION,
21 29 PENALTY, OR REVOCATION OF LICENSE.

21 30 Notice of the entry of an order of suspension or revocation
21 31 or of the imposition of a penalty or denial of a license to an
21 32 escrow agent or escrow agency shall be given in writing,
21 33 served personally, or sent by certified mail to the last known
21 34 address of the escrow agent or escrow agency affected.

21 35 Sec. 28. NEW SECTION. 545.28 CEASE AND DESIST POWERS ==
22 1 INJUNCTIVE RELIEF == SUBPOENAS.

22 2 1. For the purposes of this section, "administrator" means
22 3 either the administrator or the person or agency charged with
22 4 enforcing this chapter, or parts thereof, against the person
22 5 under investigation.

22 6 2. The administrator has the following cease and desist
22 7 powers:

22 8 a. If the administrator has reason to believe that an
22 9 escrow agent or escrow agency is conducting business in an
22 10 unsafe and injurious manner or in violation of this chapter or
22 11 if it appears that a person is engaging in the escrow business
22 12 without being licensed pursuant to this chapter, after notice
22 13 and hearing, the administrator may order a person to cease and
22 14 desist from violating any provision of this chapter or rules
22 15 adopted pursuant to this chapter.

22 16 b. The administrator, upon such hearing, may administer
22 17 oaths, examine and cross-examine witnesses, receive evidence,
22 18 and may subpoena witnesses, compel their attendance, and
22 19 require the production of all records or other documents which
22 20 the administrator deems relevant to the inquiry. In case of a
22 21 refusal of a person to comply with a subpoena issued under
22 22 this section or to testify with respect to any matter relevant
22 23 to the proceeding, on application of the administrator, the
22 24 district court of Polk county may issue an order requiring the
22 25 person to comply with the subpoena and to testify. A failure
22 26 to obey an order of the court to comply with the subpoena may
22 27 be punished by the court as a civil contempt. A cease and
22 28 desist hearing need not observe any formal rules of pleading
22 29 or evidence.

22 30 c. If after the hearing, the administrator finds that the
22 31 person charged has violated this chapter or rules adopted
22 32 pursuant to this chapter, the administrator shall issue
22 33 written findings, a copy of which shall be served upon the
22 34 person charged with the violation, along with an order
22 35 requiring the person to cease and desist from engaging in the
23 1 violation.

23 2 d. A person aggrieved by a cease and desist order of the
23 3 administrator may obtain judicial review of the order and the
23 4 administrator may obtain an order of the Polk county district
23 5 court for the enforcement of the cease and desist order.

23 6 e. A proceeding for review must be initiated within thirty
23 7 days after the aggrieved person receives the cease and desist
23 8 order. If a proceeding is not initiated, the administrator
23 9 may obtain a decree of the Polk county district court for
23 10 enforcement of the cease and desist order.

23 11 f. A person who violates a cease and desist order of the
23 12 administrator may, after notice and hearing, and upon further

23 13 order of the administrator, be subject to a penalty of not
23 14 more than five thousand dollars for each act or violation of
23 15 the cease and desist order.

23 16 3. The administrator may request the attorney general to
23 17 enforce the provisions of this chapter. A civil enforcement
23 18 action by the attorney general may be filed in equity in
23 19 either the county in which the violation occurred or Polk
23 20 county. A civil enforcement action by the attorney general
23 21 may seek any or all of the following:

23 22 a. Temporary and permanent injunctive relief.
23 23 b. Restitution for a mortgagor aggrieved by a violation of
23 24 this chapter.
23 25 c. Costs for the investigation and prosecution of the
23 26 enforcement action including attorney fees.

23 27 4. This chapter does not limit the power of the attorney
23 28 general to determine that any other practice is unlawful under
23 29 section 714.16, and to file an action under that section.

23 30 Sec. 29. NEW SECTION. 545.29 PROCEDURES FOLLOWING
23 31 DECISION ON APPEAL.

23 32 1. If the order of the administrator is reversed, the
23 33 court shall specifically direct the administrator as to the
23 34 administrator's further action in the matter including the
23 35 making and entering of any order and any conditions,
24 1 limitations, or restrictions to be contained in the order.
24 2 The administrator may revoke or alter the order for any proper
24 3 cause which is discovered after the order is issued.

24 4 2. If an order of the administrator is affirmed, the
24 5 appellant is not barred after one year from filing a new
24 6 application if the application is not otherwise barred or
24 7 limited.

24 8 3. The appeal does not suspend the operation of the order
24 9 appealed from during the pendency of the appeal except upon
24 10 proper order of the court.

24 11 Sec. 30. NEW SECTION. 545.30 POWERS OF ADMINISTRATOR
24 12 WHEN AGENCY'S AFFAIRS IN UNSAFE CONDITION.

24 13 1. If the administrator ascertains that the assets or
24 14 capital of any escrow agency are impaired or that an escrow
24 15 agency's affairs are in an unsafe condition, the administrator
24 16 may immediately take possession of all the property, business,
24 17 and assets of the escrow agency which are located in this
24 18 state and retain possession of them pending further
24 19 proceedings provided for in this chapter.

24 20 2. If the board of directors or any officer or person in
24 21 charge of the offices of such an escrow agency refuses to
24 22 permit the administrator to take possession of the property,
24 23 the administrator shall communicate that fact to the attorney
24 24 general. Thereupon the attorney general shall immediately
24 25 institute such proceedings as may be necessary to place the
24 26 administrator in immediate possession of the property of the
24 27 escrow agency. The administrator shall make or cause to be
24 28 made an inventory of the assets and known liabilities of the
24 29 escrow agency.

24 30 3. The administrator shall file one copy of the inventory
24 31 in the administrator's office and one copy in the office of
24 32 the clerk of the district court of the county in which the
24 33 principal office of the escrow agency is located and shall
24 34 mail one copy to each stockholder, partner, officer, or
24 35 associate of the agency at the person's last known address.

25 1 4. The clerk of the district court with which the copy of
25 2 the inventory is filed shall docket the inventory as any other
25 3 case or proceeding pending in the court and shall give the
25 4 inventory a docket number.

25 5 Sec. 31. NEW SECTION. 545.31 RECEIVERSHIP.

25 6 1. The officers, directors, partners, associates, or
25 7 stockholders of the escrow agency may, within sixty days after
25 8 the date the administrator takes possession of the property,
25 9 business, and assets, make good any deficit which may exist or
25 10 remedy the unsafe condition of its affairs.

25 11 2. At the expiration of such time, if the deficiency in
25 12 assets or capital has not been made good or the unsafe
25 13 condition remedied, the administrator may apply to the court
25 14 to be appointed receiver and proceed to liquidate the assets
25 15 of the escrow agency which are located in this state in the
25 16 same manner as provided by law for liquidation of a private
25 17 corporation in receivership.

25 18 3. Another person shall not be appointed receiver by any
25 19 court without first giving the administrator ample notice of
25 20 the application.

25 21 4. The inventory made by the administrator and all claims
25 22 filed by creditors are open at all reasonable times for
25 23 inspection and any action taken by the receiver upon any of

25 24 the claims is subject to the approval of the court before
25 25 which the cause is pending.

25 26 5. The expenses of the receiver and the compensation of
25 27 counsel, as well as all expenditures required in the
25 28 liquidation proceedings, must be fixed by the administrator
25 29 subject to the approval of the court, and, upon certification
25 30 of the administrator, must be paid out of the money that the
25 31 receiver possesses in that capacity.

25 32 Sec. 32. NEW SECTION. 545.32 TRUST ACCOUNTS.

25 33 1. All money deposited in escrow to be delivered upon the
25 34 close of the escrow or upon any other contingency must be
25 35 deposited in a financial institution that is insured by the
26 1 federal deposit insurance corporation or national credit union
26 2 share insurance fund unless another financial institution has
26 3 been designated in writing in the instructions for the escrow.

26 4 2. The money when deposited must be designated as "trust
26 5 funds" or "escrow accounts" or under some other appropriate
26 6 name indicating that the money is not the money of the escrow
26 7 agent or escrow agency.

26 8 3. The account must be an interest-bearing account. The
26 9 interest on the account shall be transferred quarterly to the
26 10 treasurer of state and transferred to the Iowa finance
26 11 authority for deposit in the housing assistance fund created
26 12 pursuant to section 16.40 unless there is a written agreement
26 13 between the buyer and seller to the contrary.

26 14 The escrow agent or escrow agency shall not benefit from
26 15 interest received on funds of others in the possession of the
26 16 escrow agent or escrow agency.

26 17 4. Each escrow agency or escrow agent shall notify the
26 18 administrator of the name of each financial institution in
26 19 which a trust account is maintained and also the name of the
26 20 account on forms acceptable to the administrator.

26 21 5. Each escrow agency or escrow agent shall authorize the
26 22 administrator or its designee to examine each trust account
26 23 and shall obtain the certification of the financial
26 24 institution attesting to each trust account and consenting to
26 25 the examination and audit of each trust account by a duly
26 26 authorized representative of the administrator. The
26 27 certification and consent shall be furnished on forms
26 28 specified by the administrator.

26 29 6. Each escrow agency or escrow agent shall only deposit
26 30 trust funds or escrow funds in the common trust account and
26 31 shall not commingle the escrow agency's or escrow agent's
26 32 personal funds or other funds in the trust account with the
26 33 exception that an escrow agency or escrow agent may deposit
26 34 and keep a sum not to exceed five hundred dollars in the trust
26 35 account from the escrow agency's or escrow agent's personal
27 1 funds, which sum shall be specifically identified and
27 2 deposited to cover bank service charges relating to the trust
27 3 account.

27 4 7. An escrow agency or escrow agent may maintain more than
27 5 one trust account provided the administrator is advised of the
27 6 account as specified in subsections 4 and 5.

27 7 8. The administrator shall verify on a test basis a random
27 8 sampling of the escrow agencies or escrow agents for their
27 9 trust account compliance. The administrator may upon
27 10 reasonable cause, or as a part of or after an investigation,
27 11 request or order a special report.

27 12 9. The examination of a trust account shall be conducted
27 13 by the administrator or the administrator's authorized
27 14 representative.

27 15 10. The administrator shall adopt rules pursuant to
27 16 chapter 17A to administer this section.

27 17 Sec. 33. NEW SECTION. 545.33 LIMITATIONS ON EXECUTION OR
27 18 ATTACHMENT OF ESCROW MONEY == COMMINGLING PROHIBITED.

27 19 1. Money deposited in escrow is not subject to execution
27 20 or attachment on any claim against the escrow agent or escrow
27 21 agency.

27 22 2. An escrow agent or escrow agency shall not knowingly
27 23 keep or cause to be kept any money in any bank, credit union,
27 24 or other financial institution under any name designating the
27 25 money as belonging to a client of an escrow agent or escrow
27 26 agency, unless the money was actually entrusted to the escrow
27 27 agent or escrow agency by the client for deposit in escrow.

27 28 Sec. 34. NEW SECTION. 545.34 DUTY TO RECORD LICENSE
27 29 INFORMATION.

27 30 1. If an escrow for the sale of real property is
27 31 established, the holder of the escrow shall, on the date of
27 32 establishment of the escrow, record in writing the number and
27 33 the date of expiration of one of the following:

27 34 a. License issued pursuant to chapter 535B.

27 35 b. License issued under chapter 543B of any real estate
28 1 broker, broker associate, or salesperson who will be paid
28 2 compensation from money held in the escrow for performing the
28 3 services of a real estate broker, broker associate, or
28 4 salesperson in the transaction that is the subject of the
28 5 escrow. The holder of the escrow is not required to verify
28 6 independently the validity of the number of the license.
28 7 2. If an escrow for the sale of real property is
28 8 established and the real property is or will be secured by a
28 9 mortgage or deed of trust, the holder of the escrow shall, on
28 10 the date of establishment of the escrow, record in writing the
28 11 number and the date of expiration of the license issued
28 12 pursuant to chapter 535B of any mortgage broker or mortgage
28 13 banker associated with the mortgage or deed of trust. The
28 14 holder of the escrow is not required to verify independently
28 15 the validity of the number of the license.
28 16 Sec. 35. NEW SECTION. 545.35 DUTY TO EXECUTE DOCUMENTS
28 17 TO RELEASE ESCROW MONEY == DAMAGES == ATTORNEY FEES.
28 18 1. Except as otherwise provided in subsection 2 or in the
28 19 escrow agreement between the parties and the holder of the
28 20 escrow, upon the close of an escrow for the sale of real
28 21 property or on the date the escrow is scheduled to close if it
28 22 has not closed, each party shall execute the documents
28 23 necessary to release the money deposited in the escrow.
28 24 2. A party may refuse to execute a document necessary to
28 25 release the money deposited in the escrow only if a good faith
28 26 dispute exists concerning that money.
28 27 3. If a party refuses to execute a document necessary to
28 28 release the money deposited in the escrow within thirty days
28 29 after the holder of the escrow makes a written request for the
28 30 execution, the party injured by the failure of the other party
28 31 to execute the document may collect from that party all of the
28 32 following:
28 33 a. Actual damages of not less than one hundred dollars and
28 34 not more than one percent of the purchase price of the real
28 35 property for which the money was deposited in the escrow,
29 1 whichever is greater.
29 2 b. The money deposited in the escrow which was not held to
29 3 resolve a good faith dispute concerning the sale of the
29 4 property.
29 5 c. Reasonable attorney fees.
29 6 Sec. 36. NEW SECTION. 545.36 ACTION TO RECOVER ESCROW
29 7 MONEY == DISCHARGE FROM RESPONSIBILITY == INTERPLEADER.
29 8 1. If an action is filed to recover money deposited in an
29 9 escrow established for the sale of real property, the holder
29 10 of the escrow may deposit the money, less any fees or charges
29 11 owed to the holder of the escrow, with the court in which the
29 12 action is filed.
29 13 2. A holder of an escrow who complies with the provisions
29 14 of subsection 1 is discharged from further responsibility for
29 15 the money which the holder deposits with the court.
29 16 3. This section does not limit the right of the holder of
29 17 the escrow to bring an action for interpleader pursuant to
29 18 Iowa rule of civil procedure 1.251 to determine the rightful
29 19 claimant of the money deposited in the escrow.
29 20 Sec. 37. NEW SECTION. 545.37 ATTORNEY GENERAL TO
29 21 REPRESENT DIVISION.
29 22 The attorney general shall act as the attorney for the
29 23 division in all actions and proceedings brought against or by
29 24 the division pursuant to any of the provisions of this
29 25 chapter.
29 26 Sec. 38. NEW SECTION. 545.38 TERMINATION OF EMPLOYMENT
29 27 OF ESCROW AGENT == PROHIBITED ACTIONS.
29 28 1. Whenever an escrow agent terminates, for any reason,
29 29 employment with the escrow agency with whom the escrow agent
29 30 was associated, the escrow agency shall do all of the
29 31 following:
29 32 a. Immediately deliver or send by certified mail to the
29 33 division the escrow agent's license, together with a written
29 34 statement of the circumstances surrounding the termination.
29 35 b. At the time of delivering or mailing the license to the
30 1 division, address a communication to the last known residence
30 2 address of the escrow agent, advising the escrow agent that
30 3 the license has been delivered or mailed to the division. A
30 4 copy of the communication must accompany the license when
30 5 delivered or mailed to the division.
30 6 2. An escrow agent shall not perform either directly or
30 7 indirectly any act for which a license is required pursuant to
30 8 this chapter as follows:
30 9 a. On or after the date the division receives the license
30 10 from the escrow agency until the escrow agent's license is

30 11 transferred or reissued or until a new license is issued to
30 12 another agency.

30 13 b. Without being associated with or employed by a licensed
30 14 escrow agency.

30 15 Sec. 39. NEW SECTION. 545.39 PROOF OF LICENSURE REQUIRED
30 16 IN ACTION FOR COLLECTION OF COMPENSATION.

30 17 A person engaged in the business or acting in the capacity
30 18 of an escrow agent or escrow agency within this state shall
30 19 not bring or maintain any action in any court of this state
30 20 for the collection of compensation for the performance of any
30 21 act pursuant to this chapter without alleging and proving that
30 22 the person was a licensed escrow agent or escrow agency at the
30 23 time the alleged cause of action arose.

30 24 Sec. 40. NEW SECTION. 545.40 STATUTORY AND COMMON LAW
30 25 RIGHTS UNAFFECTED.

30 26 The provisions of this chapter do not limit any statutory
30 27 or common law right of any person to bring an action in any
30 28 court for any act involved in the transaction of the escrow
30 29 business or the right of the state to punish any person for
30 30 any violation of any law.

30 31 Sec. 41. NEW SECTION. 545.41 TRANSACTIONS BY FOREIGN
30 32 CORPORATIONS.

30 33 It is unlawful for a foreign corporation to transact any
30 34 escrow business in this state unless the foreign corporation
30 35 meets all of the following requirements:

31 1 1. Qualifies under chapter 490.
31 2 2. Complies with the provisions of this chapter unless
31 3 exempted by section 545.3.

31 4 Sec. 42. NEW SECTION. 545.42 EMPLOYEE OF DIVISION
31 5 PROHIBITED FROM INTEREST IN ESCROW AGENCY.

31 6 A person shall not have a pecuniary interest in or act as
31 7 an escrow agent for any escrow agency while the person is an
31 8 employee of the division.

31 9 Sec. 43. NEW SECTION. 545.43 CHARGE FOR STATEMENT OF
31 10 INTEREST PAYMENTS PROHIBITED.

31 11 An escrow agent or escrow agency shall not charge a fee for
31 12 any statement or tax return regarding payment of interest
31 13 which federal law requires the escrow agent or escrow agency
31 14 to furnish and file.

31 15 Sec. 44. NEW SECTION. 545.44 PENALTIES FOR VIOLATIONS.

31 16 1. A person who violates section 545.2, 545.32, or 545.41
31 17 is guilty of a serious misdemeanor.

31 18 2. A person who violates any other provision of this
31 19 chapter is guilty of a simple misdemeanor.

31 20 EXPLANATION

31 21 This bill provides for licensure, regulation, and
31 22 discipline of escrow agents and escrow agencies with the
31 23 superintendent of banking acting as the administrator of this
31 24 regulatory program. The bill also regulates the handling of
31 25 trust accounts and creates a special fund to finance the
31 26 regulatory activities of the administrator. The bill does not
31 27 apply to:

31 28 1. A person doing business relating to banks, mutual
31 29 savings banks, trust companies, savings and loan associations,
31 30 common and consumer finance companies, or industrial loan
31 31 companies.

31 32 2. A licensed Iowa attorney at law acting as an attorney
31 33 or conducting an escrow agency which transacts closings
31 34 through a lawyers trust account.

31 35 3. A firm or corporation which lends money on real or
32 1 personal property and is subject to licensing, supervision, or
32 2 auditing by an agency of the United States or of this state.

32 3 4. A person acting under order of a court.

32 4 The term "escrow" means any transaction where one person,
32 5 in order to complete the sale, transfer, encumbering, or
32 6 leasing of real or personal property to another person,
32 7 delivers money, or other thing of value to a third person to
32 8 hold until a specified event or the performance of a
32 9 prescribed condition, at which time the third person delivers
32 10 the money or thing of value to a grantee, grantor, promisee,
32 11 promisor, obligee, obligor, bailee, bailor, or any agent or
32 12 employee of any of the latter.

32 13 Both an escrow agency and individual escrow agents must be
32 14 licensed. No person can be engaged in the escrow business or
32 15 act in the capacity of an escrow agent or escrow agency
32 16 without first obtaining a license as an escrow agent or escrow
32 17 agency.

32 18 The transaction of escrow business must be conducted on the
32 19 premises identified in the escrow agency license. The
32 20 administrator must annually examine each escrow agency and has
32 21 broad investigative and subpoena powers to determine any

32 22 violation of the licensing provisions.

32 23 Each escrow agency must deposit with the administrator a

32 24 corporate surety bond payable to the state of Iowa. The bill

32 25 establishes a sliding scale to determine the amount of this

32 26 bond. The bill establishes a judicial process for persons

32 27 claiming against a bond for damages.

32 28 The bill has a number of confidentiality requirements.

32 29 Notwithstanding Code chapter 22, the administrator may

32 30 withhold from public inspection any information which the

32 31 administrator believes the public welfare or the welfare of

32 32 any escrow agent or escrow agency requires to be withheld.

32 33 More specifically, the financial statements of an escrow

32 34 agency are confidential along with records and information

32 35 obtained from a governmental agency under an express

33 1 confidentiality requirement. Also, a complaint filed by the

33 2 administrator against an escrow agency or an escrow agent is

33 3 open to public inspection, but all documents and other

33 4 information filed with a complaint to the administrator and

33 5 all documents and other information compiled as a result of

33 6 the investigation conducted to determine whether to initiate

33 7 disciplinary action are confidential. An order that imposes

33 8 discipline and the findings of fact and conclusions of law

33 9 supporting that order is open to public inspection.

33 10 The bill creates a "fund for mortgage lending" account in

33 11 the office of the treasurer of state under the control of the

33 12 administrator. The fund consists of a variety of licensing

33 13 and inspection fees imposed in the bill and any other funds

33 14 collected by the administrator and will be used to carry out

33 15 the programs and laws administered by the administrator and

33 16 pay the expenses related to the operations of the

33 17 administrator. Moneys in the fund for mortgage lending at the

33 18 end of each fiscal year do not revert.

33 19 The bill sets out extensive regulation for trust accounts,

33 20 where the escrow funds are kept. All escrow funds must be

33 21 interest bearing trust account and insured with the federal

33 22 deposit insurance corporation. The escrow agent or escrow

33 23 agency cannot retain the interest received on escrow funds and

33 24 cannot commingle any personal funds with trust funds. That

33 25 interest must be transferred to the housing assistance fund

33 26 established in Code section 16.40. The trust accounts will be

33 27 examined by the administrator. The bill establishes

33 28 procedures for the release money in escrow, handling disputes,

33 29 and for the recovery of damages for failure to execute.

33 30 The bill sets out a detailed list of grounds for

33 31 disciplinary action against either an escrow agency or escrow

33 32 agent. The administrator may impose a variety of sanctions

33 33 including:

33 34 1. The revocation or suspension of a license.

33 35 2. The imposition of probation.

34 1 3. The imposition of civil penalties in an amount not to

34 2 exceed \$5,000 for each violation.

34 3 4. The issuance of a citation and warning.

34 4 Any disciplinary action must provide for an opportunity for

34 5 a due process hearing; however, the administrator may order an

34 6 emergency suspension of a licensee's license pursuant to Code

34 7 section 17A.18A.

34 8 The bill contains criminal penalties. A violation of new

34 9 Code sections 545.2, 545.32, or 545.41 is a serious

34 10 misdemeanor, while violation of any other provision is a

34 11 simple misdemeanor.

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